

This letter describes the standard drop-shipment scenario and certificates of resale. 86 Ill. Adm. Code 130.1405. (This is a GIL.)

August 7, 2007

Dear Xxxxx:

This letter is in response to your letter dated March 9, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a STATE company doing business in the Southeastern United States. One of our customers requested us to send the products to their location in CITY, Illinois. We therefore requested our vendor to drop ship the products directly to our customer and provided our vendor with Illinois form CRT-61, noting this is a resale transaction and therefore exempt from sales tax. Since we have no nexus in Illinois and do not generally have items shipped to Illinois, we do not have an Illinois resale number. Our vendor is under the impression that since we do not have an Illinois resale number, that this transaction must be taxable based on their conversation with someone with the Illinois Department of Revenue. We are therefore requesting confirmation from you that this transaction is indeed not taxable.

In Section 130.225 (d) of your tax code, although it does indicate that failure to present a resale number 'creates a presumption that a sale is not for resale', it also states that 'certifications from purchasers on Certificates of Resale in lieu of resale numbers that described the drop-shipment situation and the fact that purchasers have no contact with Illinois that would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided'. Therefore, I have attached a copy of Section 130.225 (d), a copy of the Illinois form CRT-61 Certificate of Resale submitted to our vendor, and a copy of the vendor's invoice which indicates the products shipped directly to our customer in Illinois. I believe these documents support the fact that this transaction was for resale purposes and exempt from sales tax.

Please review this information and confirm my interpretation of Section 130.225 (d). If so, I would request that an affirmation letter be sent to me which I can forward to our vendor so that they know the sale was exempt of tax and are confident they will not be penalized for not collecting tax on this transaction, now or in the future.

## **DEPARTMENT'S RESPONSE**

We hope the following information will be useful.

A drop-shipment situation is one in which out-of-State purchasers (Purchasers) make purchases for resale from companies (Companies) which are registered with Illinois and have those Companies drop-ship the property to Purchasers' customers (Customers) located in Illinois. For this discussion, it is assumed that Purchasers are out-of-State companies that are not registered with the State of Illinois and do not have sufficient nexus with Illinois to require them to collect Illinois Use Tax.

As sellers required to collect Illinois tax, Companies must either charge tax or document exemptions when they make deliveries in Illinois. In order to document the fact that their sales to Purchasers are sales for resale, Companies are obligated by Illinois to obtain valid Certificates of Resale from Purchasers. See 86 Ill. Adm. Code 130.1405. Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b). A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. Provided that this statement is correct, the Department will accept Certificates of Resale as prima facie proof that sales covered thereby were made for resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to out-of- State Purchaser

If Purchasers have no nexus with Illinois, it is unlikely that Purchasers would be registered with Illinois. If that is the case, and if Purchasers have no contact with Illinois which would require them to be registered as out-of-State Use Tax collectors for Illinois, then Purchasers could obtain resale numbers which would provide them the wherewithal to supply required numbers to Companies in conjunction with Certificates of Resale. We hope the following descriptions of out-of-State sellers required to register, either as Illinois retailers or as out-of-State Use Tax collectors and persons who qualify for resale numbers will be useful.

Assuming a delivery in Illinois, Illinois retailers are anyone who either accepts purchase orders in Illinois or who sells items of tangible personal property which are located in Illinois at the time of sale. See 86 Ill. Adm. Code 130.605(a).

Out-of-State sellers who fall under the definition of a "retailer maintaining a place of business in this State" (see 86 Ill. Adm. Code 150.201(i)) must register to collect Illinois Use Tax from Illinois customers and remit that tax to the Department. See 86 Ill. Adm. Code 150.801(c). Please note that out-of-State sellers with any kind of agent in Illinois (not just sales or lease agents) are required to register as out-of-State Use Tax collectors. If Company B has no contact with Illinois, it does not fall

within the definition of a “retailer maintaining a place of business in this State,” and it need not register as an out-of-State Use Tax collector.

The United States Supreme Court in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state’s sales tax laws. The Supreme Court has set out a two-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due Process will be satisfied if the person or entity purposely avails himself or itself of the benefits of an economic market in a forum state. *Id.* at 1910. The second prong of the Supreme Court’s nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause.

A physical presence does not mean simply an office or other physical building. Under Illinois tax law, it also includes the presence of any representative or other agent of the seller. The representative need not be a sales representative and it is immaterial for tax purposes that the representative’s presence is temporary.

Resale numbers are issued to persons who make no taxable sales in Illinois but who need the wherewithal to provide suppliers with Certificates of Resale when purchasing items that will be resold. So long as Purchasers do not act as Illinois retailers and, so long as they do not fall under the definition of a “retailer maintaining a place of business in this State”, their sales to Illinois customers are not subject to Illinois Retailers’ Occupation Tax liability and they cannot be required to act as Use Tax collectors. So long as this is true, Purchasers qualify for resale numbers that do not require the filing of tax returns with the Illinois Department of Revenue. See 86 Ill. Adm. Code 130.1415.

Please note that the fact that Purchasers may not be required to act as Use Tax collectors for Illinois does not relieve their Customers of Use Tax liability. Therefore, if Purchasers do not collect Illinois Use Tax from their Customers, the Customers would have to pay their tax liability directly to the Illinois Department of Revenue.

While active registration or resale numbers on Certificates of Resale are still preferred, the Illinois Retailers’ Occupation Tax Act provides as follows:

“Failure to present an active registration number or resale number and a certification to the seller that a sale is for resale creates a presumption that a sale is not for resale. This presumption may be rebutted by other evidence that all of the seller’s sales are sales for resale or that a particular sale is a sale for resale.” 35 ILCS 120/2c.

Again, including registration or resale numbers from Purchasers on Certificates of Resale is the preferred method for documenting that their purchases from Companies are purchases for resale. However, in light of this statutory language, certifications from Purchasers on Certificates of Resale in lieu of resale numbers which described the drop-shipment situation and the fact that Purchasers have no contact with Illinois which would require them to be registered and that they choose not to obtain Illinois resale numbers would constitute evidence that this particular sale is a sale for resale despite the fact that no registration number or resale number is provided. The risk run by Companies in accepting such a certification and the risk run by Purchasers in providing such a certification is that an Illinois auditor is much more likely to go behind a Certificate of Resale which does not contain a valid resale number and require that more information be provided by Companies as evidence that the particular sale was, in fact, a sale for resale.

If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you

wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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